UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

NO. 1008 SMITH-ERICKSON FARMS, INC., Y.M.C.A. CAMP TECUMSEH, INC. d/b/a CAMP TECUMSEH, Plaintiff, WHITE COUNTY COMMISSIONERS, Defendant, SMITH-ERICKSON FARMS, INC., Third-Party Defendant.	)	Cause No. 4:15-cv-00078-PPS-JEM

THIRD AMENDED VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND STAY OF ZONING DECISION

Camp Tecumseh seeks to protect its ninety-plus year history of providing a safe, healthy, and wholesome rural environment for tens of thousands of children to be educated, spiritually enriched, and enhanced by outdoor experiences every year. Camp Tecumseh does not oppose animal feeding operations—Camp Tecumseh just opposes the White County Commissioners' decision to allow 9,000-plus hogs 800 yards from Camp Tecumseh's property. Camp Tecumseh seeks to reverse the Commissioners' decision in Zoning Petition No. 1008 because it violated the Indiana Constitution's prohibition of unequal treatment of similarly situated entities, federal law prohibitions against government limitations on religious activities, and the U.S. Constitution's protections of free exercise, equal protection, and due process. **Alternatively, the recent amendment to the White County Zoning Ordinance to include a one and one-half (1 ½) mile setback from any Lake Shafer, Big Monon, Tippecanoe River or Lake Freeman shoreline boundary bars the activity associated with Zoning Petition No. 1008.**

THE PARTIES

1. Plaintiff Y.M.C.A. Camp Tecumseh, Inc. d/b/a Camp Tecumseh ("Camp Tecumseh") is a non-profit Indiana corporation located primarily in Carroll County, Indiana with the address 12635 West Tecumseh Bend Road, Brookston, Indiana.

2. Camp Tecumseh operates Indiana's largest outdoor education program and has from its founding in 1924 carried out its mission of providing a Christian rural setting for thousands of children to be educated, spiritually enriched, and enhanced by outdoor experiences otherwise unavailable elsewhere.

3. Defendant the White County Commissioners (the "Commissioners") is the County Executive for White County, Indiana existing under the laws of the State of Indiana.

4. The Commissioners are subject to the authority of the Indiana Constitution.

5. The statutes of Indiana give the Commissioners authority to amend zoning ordinances in White County, Indiana.

6. The Commissioners qualify as a "government" within the meaning of 42 U.S.C. § 2000cc-5(4)(A)(i).

7. Third-party Defendant Smith-Erickson Farms, Inc. filed a petition on October 23, 2012, to amend the zoning of a tract of land immediately to the west of Camp Tecumseh's boundary line from A-1, General Agricultural District, to A-2, Agricultural Industry District.

BACKGROUND FACTS GIVING RISE TO ALL CLAIMS

A. Camp Tecumseh

8. Tens of thousands of parents annually send their children to Camp Tecumseh because it is a safe and healthy rural setting for their children to be educated, spiritually enriched, and enhanced by the outdoors.

9. Camp Tecumseh attracted campers to its summer camp from thirty-eight states and seven countries in 2012 with similar numbers in 2013, **2014, and 2015**.

10. Camp Tecumseh hosts specialty camps for adults and children with chronic diseases, including the Hoosier Burn Camp; the National Kidney Foundation of Indiana for children who are able to receive dialysis while at camp; and Camp Bluebird, an adult cancer camp.

11. Camp Tecumseh's religious exercise and beliefs are fundamental to its mission and function as an essential element of the Camp's extensive outdoor activities.

(a) Camp Tecumseh's motto – "I am Third" – guides the Camp's daily activities, where God is first, the other person is second, and "I am Third."

(b) Many people who attend Camp Tecumseh attest that they feel closer to God at Camp Tecumseh than anywhere else.

(c) Camp Tecumseh hosts baptism services conducted by churches of various Christian denominations in the section of the Tippecanoe River adjacent to the Camp.

(d) Camp Tecumseh conducts regular religious services at the Camp's three outdoor chapels six days a week throughout the summer months and regular Sunday religious services throughout the year weather permitting.

(e) The daily chapel services and evening devotional services provide campers with the chance to explore their faith in a unique setting away from their regular lives.

(f) Kettelhut Chapel, located just south of and on a hill overlooking Richard G. Marsh Lake, seats 3**80** people and has a sound system for microphones, musical instruments, and audio recordings.

(g) Green Cathedral chapel, overlooking the Tippecanoe River, seats 700 or the entire capacity of Camp Tecumseh.

(h) Day Camp chapel, located in the Day Camp pavilion, is a large timber pavilion constructed in 2009. Camp Tecumseh uses the Day Camp chapel primarily to host the 200 summer day campers that come to Camp Tecumseh Monday through Friday.

12. Camp Tecumseh has characteristics similar to an incorporated municipality such as the Camp's:

(a) system of roads, own sewer and water system, and various dining establishments, chapels, and educational facilities;

(b) 390 employees during the summer months and 35 employees throughout the remainder of the year;

(c) 250 to 700 residents almost every weekend throughout the year;

(d) provision of more than 7,000 parent-child programs, 4,000 Girl Scouts, 2,000 Cub Scouts, 45 church retreats, 50 college/university organizations, 70 family reunions, and dozens of civic and business groups on an annual basis.

13. Camp Tecumseh's property is located primarily in Carroll County, Indiana, with County Road 1300 West, or North Springboro Road, serving as both (A) a portion of the Camp's western boundary line and (B) the county line between Carroll and White County.

B. Camp Tecumseh's Opposition to the Rezoning

14. Immediately west of Camp Tecumseh's western boundary line in White County, across County Road 1300 West, or North Springboro Road, sits property used primarily as farmland to grow corn and soybeans.

15. Before July 1, 2013, this property was zoned as A-1, General Agricultural.

16. On October 23, 2012, Smith-Erickson Farms, Inc. petitioned to amend the zoning of a tract of land immediately to the west of Camp Tecumseh's boundary line from A-1, General Agricultural District, to A-2, Agricultural Industry District, (the "Rezoning Petition") to construct a confined feeding operation ("CFO") or a concentrated animal feeding operation ("CAFO").

17. In Indiana, an animal feeding operation with 600 or more hogs qualifies as a CFO. A CFO is deemed a CAFO if the facility has more than 2,500 hogs weighing above 55 pounds or 10,000 hogs weighing less than 55 pounds.

18. The purpose of an A-2, Agricultural Industry District, is to provide land for "more intense agricultural uses and agricultural related industries," including CFOs. White County Zoning Ordinance 2.5.2(A).

19. As of July 1, 2016, an A-2, Agricultural Industry District, may not be located within one mile of an incorporated municipality or certain unincorporated town areas in White County or within one and one-half miles from any Lake Shafer, Big Monon, Tippecanoe River or Lake Freeman shoreline boundary. White County Zoning Ordinance 2.5.2(B)(2)-(3); 3.17.2(B).

20. The proposed facility would consist of two barns, each with the capacity of housing 4,620 hogs, and a concrete storage tank beneath the barns with the capacity of holding the millions of gallons of manure produced by the hogs in the barns over the course of one year.

21. Camp Tecumseh opposed the Rezoning Petition due to the concern that the odor caused by 9,000 hogs and millions of gallons of manure so close to its property would destroy the outdoor experiences central to Camp Tecumseh's purpose.

22. The Commissioners failed to consider the Rezoning Petition's impact on air quality, assuming incorrectly that the Indiana Department of Environmental Management's CFO approval process addressed the air quality concerns raised by opponents to the Rezoning Petition.

23. The Commissioners' technical analysis relied on maps that failed to consider any properties east of County Road 1300 West, or North Springboro Road. By ignoring properties east of County Road 1300 West, the Commissioners' analysis omitted any substantive consideration of Camp Tecumseh's facility.

24. Representatives of Camp Tecumseh informed the Commissioners that little distinguishes Camp Tecumseh from an incorporated municipality, including the Camp's lodging, restaurants, parks, schools, places of worship, pools, ponds, lakes, healthcare facilities, people at work, people at play, people at school, and people at home in their residences. Camp Tecumseh's representatives demanded that the Camp receive the same one-mile setback from the A-2 Agricultural Industry District the Commissioners accord incorporated municipalities.

25. But the Commissioners ignored these similarities and failed to require the same one-mile setback from Camp Tecumseh accorded incorporated municipalities.

C. The Rezoning of Seven Acres Adjacent to Camp Tecumseh

26. On July 1, 2013, the Commissioners approved the Rezoning Petition.

27. The proposed CFO, or CAFO, will include the construction of two wean-to-finish pig production buildings, or hog barns **on a site within one and one-half (1 ½) miles from the Tippecanoe shoreline boundary.**

28. Each proposed hog barn is projected to house 4,620 hogs.

29. Beneath the barns will reside a concrete manure storage tank with the capacity to store about one year's production of manure produced by the facilities' hogs.

30. With an average hog producing about fourteen pounds of manure a day or about 2.5 tons a year, at full capacity, the concrete manure storage tank could hold 47 million pounds of manure at any given time.

31. The anticipated odor caused by the proximity of the hog barns and the manure storage tank to Camp Tecumseh threatens the outdoor experiences central to Camp Tecumseh's purpose. The thousands of hogs jeopardize Camp Tecumseh's existence as a destination for children to encounter the outdoors, absorb the character qualities imparted by rural open-air experiences, and worship and grow in their spiritual faith in the Camp's chapels.

32. The Commissioners' decision substantially burdens Camp Tecumseh's religious exercise and expression without using the least restrictive means of achieving a compelling governmental interest.

D. The Amendment to the Zoning Ordinance

33. On April 18, 2016, the Commissioners voted to amend White County Zoning Ordinance 2.5.2 and 3.17. The amendment provided additional setbacks for CFOs/CAFOs.

34. Specifically, the amendment provided that an A-2 District "cannot be located within one and one-half (1 ½) miles from any Lake Shafer, Big Monon, Tippecanoe River or Lake Freeman shoreline boundary as provided for on the White County Official Zoning Map." White County Zoning Ordinance 2.5.2(B)(3); 3.17.2(B).

35. The amendment provides for "any building or structure used in conjunction with an existing . . . CFO/CAFO" to be allowed to expand or reconstruct facilities, their zoning district boundaries and/or operations as long as such expansion or reconstruction occurs no closer to the setback standards than those physically in place as of July 1, 2016 or

as provided below, whichever are least restrictive." White County Zoning Ordinance §§ 2.5.2; 3.17.1.

36. The amendment becomes effective July 1, 2016.

37. The tract of land that is the subject of the Rezoning Petition is located within one and one-half (1 ½) miles of the Tippecanoe River.

FIRST CLAIM FOR RELIEF
The Indiana Constitution's Prohibition Against Unequal Treatment

38. Camp Tecumseh realleges paragraphs 1 through **37** as if fully set forth herein.

39. Article 1, § 23 of the Constitution of Indiana provides that "[t]he General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

40. Article 1, Section 23 of the Indiana Constitution imposes two requirements on the Commissioners: (1) that disparate treatment accorded by its governmental action be reasonably related to inherent characteristics which distinguish unequally treated classes, and (2) the preferential treatment be uniformly applicable and equally available to all those similarly situated.

41. Camp Tecumseh has the same inherent characteristics as an incorporated municipality.

42. The one-mile setback accorded an incorporated municipality must be uniformly applicable and equally available to Camp Tecumseh.

43. The Commissioners did not accord Camp Tecumseh the same one-mile setback granted an incorporated municipality.

44. Camp Tecumseh's property and activities are adjacent to the Tippecanoe River referenced in the White County Zoning Ordinance.

45. The one and one-half (1 ½) miles setback accorded other portions of the Tippecanoe River must be uniformly applicable and equally available to property and activities on all portions of the Tippecanoe River.

46. Camp Tecumseh's property and activities are similar to other property and activities on other portions of the Tippecanoe River, Lake Shafer, Big Monon, and Lake Freeman, including drawing people from outside the area on a seasonal basis, supplying the area with additional tax revenue, and supplying White County with jobs and economic activity.

47. If Camp Tecumseh does not prevail on its claim that the White County Zoning Ordinance applies to the Rezoning Petition, the Commissioners will have failed to accord Camp Tecumseh with the same one and one-half (1 ½) miles setback granted other property and activities within one and one-half (1 ½) miles of the Tippecanoe River, Lake Shafer, Big Monon, and Lake Freeman.

48. Camp Tecumseh has no adequate remedy at law for the harm and damage caused by the Commissioners' violation of its rights under Article 1, § 23 of the Indiana Constitution.

49. The Commissioners have caused Camp Tecumseh to suffer, and to continue to suffer, irreparable harm, damage, and injury.

50. Camp Tecumseh will continue to suffer such damages unless the Commissioners' decision on the Rezoning Petition is permanently enjoined.

51. Camp Tecumseh has provided notice to the Indiana Attorney General pursuant to Indiana Code § 34-14-1-11 contemporaneously with its Motion for Leave to File a Third Amended Verified Petition.

SECOND CLAIM FOR RELIEF
Substantial Burden on Camp Tecumseh's Religious Activities Under the Religious Land Use and Institutionalized Persons Act of 2000

52. Camp Tecumseh realleges paragraphs 1 through **51** as if fully set forth herein.

53. The Commissioners' approval of the Rezoning Petition deprives Camp Tecumseh of its right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act of 2000, by implementing a land use regulation in a manner that places a substantial burden on Camp Tecumseh's religious exercise.

54. The substantial burden on Camp Tecumseh's religious exercise affects commerce with foreign nations and among the several States.

55. The Commissioners' decision to approve the Rezoning Petition qualifies as land use regulation under the Religious Land Use and Institutionalized Persons Act because the decision applied a zoning law that limits or restricts the use or development of land adjacent to real estate in which Camp Tecumseh has ownership or other property interest.

56. The Commissioners imposed the substantial burden in implementing the land use regulation by making an individualized assessment of the proposed uses for the property involved in the Rezoning Petition.

57. The Commissioners' approval of the Rezoning Petition failed to further a compelling governmental interest.

58. The Commissioners failed to use the least restrictive means in approving the Rezoning Petition.

59. Camp Tecumseh has no adequate remedy at law for the harm and damage caused by the Commissioners' violation of its statutory rights.

60. The Commissioners have caused Camp Tecumseh to suffer, and to continue to suffer, irreparable harm, damage, and injury.

61. Camp Tecumseh will continue to suffer such damages unless the Commissioners' decision on the Rezoning Petition is permanently enjoined.

THIRD CLAIM FOR RELIEF
The Free Exercise Clause of the U.S. Constitution

62. Camp Tecumseh realleges paragraphs 1 through **61** as if fully set forth herein.

63. Camp Tecumseh exercises religion within the meaning of the Free Exercise Clause of the First Amendment to the U.S. Constitution and made applicable to the States by the Fourteenth Amendment by conducting daily outdoor chapel services and regular Sunday religious services at its Camp.

64. The Commissioners' decision to approve the Rezoning Petition threatens Camp Tecumseh's ability to continue hosting these outdoor chapel services and regular Sunday religious services depriving Camp Tecumseh of its right to free exercise of religion.

65. The Commissioners' decision to approve the Rezoning Petition substantially burdens Camp Tecumseh's religious exercise without furthering a compelling governmental interest.

66. Camp Tecumseh has no adequate remedy at law for the harm and damage caused by the Commissioners' violation of its constitutional rights.

67. The Commissioners have caused Camp Tecumseh to suffer, and to continue to suffer, irreparable harm, damage, and injury.

68. Camp Tecumseh will continue to suffer such damages unless the Commissioners' decision on the Rezoning Petition is permanently enjoined.

FOURTH CLAIM FOR RELIEF
Equal Protection Clause

69. Camp Tecumseh realleges paragraphs 1 through **68** as if fully set forth herein.

70. The Commissioners intentionally and arbitrarily treated Camp Tecumseh differently from an incorporated municipality in considering the setback requirements for the Rezoning Petition.

71. Camp Tecumseh is similarly situated to an incorporated municipality for the following reasons.

(a) Camp Tecumseh maintains a system of roads, operates its own sewer and water system, and supports various dining establishments, chapels, and educational facilities.

(b) Camp Tecumseh employs 390 people during the summer months and 35 people throughout the remainder of the year.

(c) Between 250 to 700 people stay at Camp Tecumseh almost every weekend throughout the year.

(d) In 2012, Camp Tecumseh served more than 7,000 parent-child programs, 4,000 Girl Scouts, 2,000 Cub Scouts, 45 church retreats, 50 college/university organizations, 70 family reunions, and dozens of civic and business groups.

(e) In 2013, **2014, and 2015,** Camp Tecumseh served a similar number of people and groups.

72. The Commissioners failed to accord Camp Tecumseh the one-mile setback to which incorporated municipalities are entitled under the White County Zoning Ordinance.

73. By failing to accord Camp Tecumseh the same setback granted an incorporated municipality, the Commissioners' decision deprived and continues to deprive Camp Tecumseh

of its right to equal protection of the laws, as secured by the Fourteenth Amendment, by treating Camp Tecumseh on less than equal terms as similarly situated institutions.

74. If Camp Tecumseh does not prevail on its claim that the White County Zoning Ordinance applies to the Rezoning Petition, the Commissioners intentionally and arbitrarily treated the area of the Tippecanoe River around Camp Tecumseh differently by failing to accord Camp Tecumseh with the same one and one-half (1 ½) miles setback granted other property and activity within one and one-half (1 ½) miles of the Tippecanoe River, Lake Shafer, Big Monon, and Lake Freeman shoreline boundary.

75. Camp Tecumseh property and activities are similarly situated to the other areas of the Tippecanoe River, Lake Shafer, Big Monon, and Lake Freeman that are protected by the one and one-half (1 ½) miles setback.

(a) Camp Tecumseh maintains a system of roads, operates its own sewer and water system, and supports various dining establishments, chapels, and educational facilities.

(b) Camp Tecumseh employs 390 people during the summer months and 35 people throughout the remainder of the year.

(c) Between 250 to 700 people stay at Camp Tecumseh almost every weekend throughout the year.

(d) In 2012, Camp Tecumseh served more than 7,000 parent-child programs, 4,000 Girl Scouts, 2,000 Cub Scouts, 45 church retreats, 50 college/university organizations, 70 family reunions, and dozens of civic and business groups.

(e) In 2013, 2014, 2015, Camp Tecumseh served a similar number of people and groups.

76. The Commissioners failed to accord Camp Tecumseh the one and one-half (1 ½) miles setback to which other property and activities on other portions of the Tippecanoe River are entitled.

77. By failing to accord Camp Tecumseh the same setback other property and activities on other portions of the Tippecanoe River, the Commissioners' decision deprived and continues to deprive Camp Tecumseh of its right to equal protection of the laws, as secured by the Fourteenth Amendment, by treating Camp Tecumseh on less than equal terms as similarly situated institutions.

78. Camp Tecumseh has no adequate remedy at law for the harm and damage caused by the Commissioners' violation of its constitutional rights.

79. The Commissioners have caused Camp Tecumseh to suffer, and to continue to suffer, irreparable harm, damage, and injury.

80. Camp Tecumseh will continue to suffer such damages unless the Commissioners' decision on the Rezoning Petition is permanently enjoined.

FIFTH CLAIM FOR RELIEF
The Due Process Clause

81. Camp Tecumseh realleges paragraphs 1 through 80 as if fully set forth herein.

82. The Commissioners imposed time and topic limitations on representatives of Camp Tecumseh at the public hearings where the Rezoning Petition was considered.

83. The Commissioners also failed to consider the Rezoning Petition's impact on the area's air quality by incorrectly presuming that the Indiana Department of Environmental Management's approval process for CFOs addressed air quality.

84. By imposing time and topic limitations and failing to consider the Rezoning Petition's impact on air quality, the Commissioners' violated Camp Tecumseh's right to due process under the Fourteenth Amendment of the U.S. Constitution.

85. Camp Tecumseh has no adequate remedy at law for the harm and damage caused by the Commissioners' violation of its constitutional rights.

86. The Commissioners have caused Camp Tecumseh to suffer, and to continue to suffer, irreparable harm, damage, and injury.

87. Camp Tecumseh will continue to suffer such damages unless the Commissioners' decision on the Rezoning Petition is permanently enjoined.

SIXTH CLAIM FOR RELIEF

88. Camp Tecumseh realleges paragraphs 1 through 87 as if fully set forth herein.

89. The amendment to the White County Zoning Ordinance to include a one and one-half (1 ½) miles setback from any Tippecanoe River shoreline boundary applies to the activity contemplated by the Rezoning Petition because the tract of land that is the subject of the Rezoning Petition is located within one and one-half (1 ½) miles of the Tippecanoe River.

90. Smith-Erickson Farms, Inc. is therefore prohibited from operating a CFO/CAFO on the tract of land that is the subject of the Rezoning Petition by operation of the amendment to the White County Zoning Ordinance.

PRAYER FOR RELIEF

Plaintiff Y.M.C.A. Camp Tecumseh, Inc. d/b/a Camp Tecumseh prays that judgment be entered in its favor and against the defendant, The Board of Commissioners of the County of White, Indiana, as follows:

(a) **Declaratory relief in the form of a judicial declaration that a CFO/CAFO cannot be operated on the land that is the subject of the Rezoning Petition; or in the alternative, that the Commissioners' decision granting the Rezoning Petition (i) violated Camp Tecumseh's rights to equal privileges and immunities under Article 1, § 23 of the Constitution of Indiana; (ii) substantially limited Camp Tecumseh's religious activities in violation of Camp Tecumseh's rights under federal law; (iii) violated Camp Tecumseh's rights to free exercise under the First Amendment to the U.S. Constitution; (iv) violated Camp Tecumseh's rights to equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution; and (v) violated Camp Tecumseh's rights to due process under the Fourteenth Amendment to the U.S. Constitution;**

(b) Annulment of the Commissioners' decision in the Rezoning Petition;

(c) Declaratory relief in the form of a judicial declaration that the Commissioners' decision in the Rezoning Petition is void pursuant to Indiana Code § 5-14-1.5-7;

(d) Injunctive relief enjoining the Commissioners from rezoning property adjacent or near Camp Tecumseh in a manner that (i) violates Camp Tecumseh's rights to equal privileges and immunities under Article 1, § 23 of the Constitution of Indiana; (ii) substantially limits Camp Tecumseh's religious activities in violation of Camp Tecumseh's rights under federal law; (iii) violates Camp Tecumseh's rights to free exercise under the First Amendment to the U.S. Constitution; (iv) violates Camp Tecumseh's rights to equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution; and (v) violates Camp Tecumseh's rights to due process under the Fourteenth Amendment to the U.S. Constitution;

(e) An award of Camp Tecumseh's reasonable attorneys' fees, to the extent permitted under 42 U.S.C. § 1988(b), or otherwise allowed by law, arising out of the Commissioners' decisions on the Rezoning Petition and out of this litigation;

(f) Costs of this action; and

(g) Such other, further, and different relief as this Court deems just, proper, and equitable.

VERIFICATION

I affirm under the penalties of perjury that the foregoing representations are true and correct to the best of my knowledge and belief.

Scott Brosman, CEO

Scott Brosman, in his capacity of Chief Executive Officer of Y.M.C.A. Camp Tecumseh, Inc. d/b/a Camp Tecumseh

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

/s/ Matthew T. Albaugh

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2016, the foregoing Third Amended Verified Complaint was electronically filed. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Mark J. Crandley
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Additionally, the foregoing Third Amended Verified Complaint was served via first-class U.S. Mail on June 16, 2016 to the following:

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*_/s/ Matthew T. Albaugh_*